

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Case No. 15-CR-1889 JCH**

**RAYMOND MOYA,**

**Defendant.**

**ORDER**

This matter comes before the Court on Defendant Raymond Moya's motion in limine to exclude, among other items, a recording of the 911 call made by Jennifer Weiss on August 13, 2011. [Doc. 147] On January 3, 2017, the Court issued an order deferring ruling on the opposed portions of that motion, including the admissibility of the 911 call, until trial. [Doc. 184] However, during a pretrial conference on March 16, 2017, the Government requested that the issue of the admissibility of the 911 call be decided before trial to aid in its trial preparations. [Doc. 211] After consideration of the evidence, motions, briefing, and relevant law, the Court concludes that Defendant's motion in limine to exclude the 911 call shall be granted in part, and denied in part.

Defendant argues that the 911 call is inadmissible under Federal Rule of Evidence 403 because it is "more prejudicial than probative." [Doc. 147, p. 6] The Government responds that the call, or at least portions of it, should be admitted because the danger of unfair prejudice does not substantially outweigh its probative value. [Doc. 176] On December 28, 2016, the

Government provided the Court three excerpts from the 911 call to consider in the event that was not inclined to admit the call in its entirety.

The 911 call from Jennifer Weiss is approximately ten minutes long and captures Ms. Weiss's reaction to finding her son, Cameron, lying in his bed, unconscious and not breathing. In the recording, Ms. Weiss can be heard crying and pleading with Cameron to regain consciousness, as the 911 operator and paramedic inquire about his condition and instruct her in attempting to resuscitate him. The call ends after paramedics arrive at the scene. The three excerpted portions of the 911 call focus on Ms. Weiss's observations of her son's physical condition.

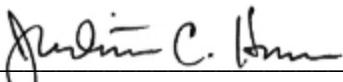
To the extent that Cameron's symptoms were consistent (or inconsistent) with a heroin overdose, Ms. Weiss's description of his physical condition would be probative evidence of the cause of Cameron's death, and would not pose a risk of unfair prejudice. Accordingly, admission of the excerpted portions of the call does not appear to violate Rule 403.

However, Ms. Weiss's emotional reaction to the circumstances is not relevant to aiding the jury in determining the scope of Defendant's conduct, nor what caused Cameron's death, and therefore has no probative value in the case. To the contrary, exposing the jury to the entirety of Ms. Weiss's experience, including her audible cries and screams, will no doubt invoke an emotional reaction in the jury and increases the possibility that the jury could convict Defendant based on sympathy for the Weiss family, rather than a pure consideration of Defendant's guilt of the crime charged. *See United States v. Leonard*, 439 F.3d 648, 652 (10th Cir. 2006) ("Evidence is unfairly prejudicial if it makes a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect adversely the jury's attitude toward the defendant wholly apart from its judgment as to his guilt or innocence of the crime charged.")

(internal quotation marks and citation omitted)). The Court concludes that the danger of unfair prejudice substantially outweighs the probative value of these remaining portions of the 911 call (those not included in the Government's excerpts), because they do not appear to have any probative value at all.

**IT IS THEREFORE ORDERED** that the Defendant's *Motion in Limine to Exclude ... 911 Call ... [Doc. 147]* is **DENIED IN PART** with regard to the excerpts of the 911 call provided by the Government on December 28, 2016. The motion is **GRANTED IN PART** with regard to the remaining portions of the 911 call.

**IT IS SO ORDERED.**

  
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**UNITED STATES DISTRICT JUDGE**